

SARA TURCSAN
DONNA TURCSAN

IBLA 76-119

Decided January 23, 1976

Appeal from the decision of the Wyoming State Office, Bureau of Land Management, denying reinstatement of oil and gas lease W 13657-T.

Affirmed.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only when the lessees show that their failure to pay the rental on or prior to the anniversary date was either justifiable or not due to a lack of reasonable diligence. The absence of a lessee either on vacation or on job training is insufficient to satisfy the statutory criteria.

APPEARANCES: Sara and Donna Turcsan, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

The Wyoming State Office, Bureau of Land Management (BLM), on July 21, 1975, denied appellants' petition to reinstate terminated oil and gas lease W 13657-T, because they failed to show the delay in the rental payment was either justifiable or not due to a lack of reasonable diligence on their part.

The subject lease terminated by operation of law for failure to pay advance rental on or before the anniversary date as provided by 30 U.S.C. § 188(b) (1970) and 43 CFR 3108.2-1(a). The anniversary date of the lease was July 1, 1975. Lessees' check, dated June 30, 1975, was remitted in an envelope postmarked July 1, 1975, and was received by the Bureau on July 7, 1975. Lessees petitioned for reinstatement on July 14, 1975, stating:

The reason our rental payment was not sent until June 30, 1975, was because my daughter, Donna Turcsan, was out of town on vacation for the entire month of June and since the death of my husband, Joseph Turcsan, she has handled my personal finances, particularly the writing of checks. * * *

Joseph Turcsan died in December of 1972, having had the lease since July 1, 1968. This lease passed to his only heirs, his wife and daughter, each receiving an undivided 50 percent record title interest in the lease.

On August 11, 1975, lessees appealed the decision of the Bureau, setting forth the following reasons:

1. They had never sent late rentals before.
2. The letter containing their rental payment was postmarked July 1, but not received until July 7. Therefore, the delay was partially the fault of the U.S. Post Office. Appellants note that the letter was postmarked on the due date and not after.
3. Appellants clarified that Donna, the daughter (one of the appellant lessees), was not away on vacation but was on job training, contending that such was a factor not fully within her control.

[1] The Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 188(b) (1970), provides that an oil and gas lease terminates by operation of law if the annual rental is not paid on or before the anniversary date of the lease. The Act and regulations further provide for reinstatement of such a terminated lease upon petition by lessee showing that the failure "was either justifiable or not due to a lack of reasonable diligence." 30 U.S.C. § 188(c) (1970); 43 CFR 3108.2-1(c).

The history of this last provision allowing reinstatement sheds light on the requirements which have evolved. Prior to 1954, the Mineral Leasing Act contained no provision for automatic termination of an oil and gas lease for failure to pay advance rentals timely. The Department of Interior therefore had to consider the lease still in effect in the absence of a written relinquishment from the lessee. This worked an undue hardship on various lessees who, desiring to relinquish their lease, erroneously assumed their failure to pay the rent prior to the anniversary date resulted in its cancellation. As a result, the lessees were liable for the full rent owed for that ensuing year. Furthermore, the practice tied up government leasing, because the Department was unable to declare a lease terminated and put the land up for new lease offers.

Congress by Act of July 29, 1954, 68 Stat. 585, amended the Mineral Leasing Act to provide for automatic termination of a lease for failure to pay rent timely, timely payment being interpreted to mean receipt of the payment at the proper office on or before the anniversary date of the lease and not the mailing on or before that date. This amendment proved harsh in some circumstances. To counteract this result Congress in 1962 enacted P.L. 87-822, 76 Stat. 943, and in 1970, P.L. 91-245, 30 U.S.C. § 188(c) (1970), allowing lessees to petition for reinstatement, provided, among other things, the lessee proves to the Secretary's satisfaction that the failure to pay timely was justifiable or not due to a lack of reasonable diligence. Louis Samuels, 8 IBLA 268, 269-70 (1972).

Reasonable diligence, defined by case law and regulation, "normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment." 43 CFR 3108.2-1(c)(2).

* * * This Board has granted reinstatement in cases where the postmark demonstrates that the payment was deposited in the mails early enough to show reasonable diligence. R. G. Price, 8 IBLA 290, 292 (1972). If the postmark does not demonstrate reasonable diligence in the lessee's mailing of the payment, the Board will not go beyond it in the absence of exceptional circumstances. * * *

W. A. Fitzhugh, 18 IBLA 94, 95 (1974). ^{1/}

Appellants' remittance, postmarked July 1, the due date, obviously does not take into account normal delivery time, since the payment was mailed from Detroit, Michigan, to Cheyenne, Wyoming. Furthermore, even if we considered it mailed as of the date on the check, June 30, this would not constitute reasonable diligence, as one would expect normal delivery over that distance to take more than 1 day, allowing for normal delays. Joseph Wachter, 22 IBLA 95 (1975); W. E. Hester, Jr., 18 IBLA 420 (1975).

A failure to exercise reasonable diligence in payment of rent may be justifiable if it was caused by a factor normally outside the control of the lessee. Such reasons include, for example, natural disasters such as an earthquake or flood, or the death or illness of the lessee or an immediate member of his family, occurring in close proximity to the anniversary date of the lease and having a

^{1/} This case was reversed and remanded upon reconsideration in light of new evidence submitted. W. A. Fitzhugh (On Reconsideration), 18 IBLA 323 (1975).

causative effect. Milan de Lany, 22 IBLA 47 (1975); W. E. Hester, Jr., *supra*; Louis Samuels, *supra*. Lessee's vacationing or being away on job training is insufficient. Cf. Charles C. Sturdevant, 20 IBLA 280 (1975); G. Wesley Ault, 16 IBLA 291 (1974); Louis Samuels, *supra* at 279-80.

Because appellants have failed to prove that their tardy tender was either justifiable or not due to a lack of reasonable diligence, no relief may be granted. The reinstatement petition was properly rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

